

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK AUSSIEKER,

Plaintiff,

v.

OMID AGHAZADEH,

Defendant.

No. 2:25-cv-0888 TLN AC (PS)

FINDINGS AND RECOMMENDATIONS

Defendant is proceeding in this matter pro se, and pre-trial proceedings are accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). Defendant filed a motion to dismiss. ECF No. 22. The court recommends the motion to dismiss be GRANTED for the reasons set forth below.

I. Background

A. The Complaint

This is a putative class action brought under the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227. ECF No. 1 at 1. Plaintiff’s personal telephone number is on the National Do Not Call Registry. Id. at 4. Plaintiff has never been a customer of Aghazadeh’s, nor did he ever consent to be contacted by Aghazadeh. Id. Nonetheless, plaintiff alleges that on November 4, 2024 at 8:25 AM, he received a text message from 202-260-1663. Id. The message read. “Hello KIMBERLY, Came across your property in SACRAMENTO. Are you open to

1 options to sell it?” Id. at 5. Plaintiff responded that he was not open to selling the property
2 because there were people living in it. Id. He then received a second text, reading “Do you own
3 the property at [NN]A[XXXXXX XXXX]?” Id.

4 Plaintiff continued to receive various text messages from the defendant asking to give a
5 proposal on the plaintiff’s home and touted the services offered by the defendant, using the
6 fictitious names “Yuna Homes” and “Golden Capital.” Id. Plaintiff contacted the defendant’s
7 telephone company to ascertain who was texting him illegally with fake names, and the telephone
8 company responded stating that the customer of record was “Golden Capital Holdings, LLC”
9 with an address in Chatsworth, CA, and the responsible person on the account was defendant
10 Omid Aghazadeh. Id. Plaintiff alleges that defendant “openly brags” on Instagram about
11 engaging in a business called “real estate wholesaling,” which consists of cold-calling people that
12 are potentially interested in selling their house, cold-calling people that are potentially interested
13 in buying the house, and then brokering a deal for the property and pocketing the difference. Id.
14 Plaintiff contends that this activity requires a real estate brokers license pursuant to Cal. Bus. &
15 Prof. Code §10131, and defendant does not have a real estate license. Id. Plaintiff alleges
16 defendant posted on Instagram that he uses an automated system to send as many as 25,000 text
17 messages per day, that he has made over \$750,000 in the last year by engaging in this practice.
18 Id.

19 Plaintiff received a phone call from defendant’s number on November 25, 2024. Id. at 6.
20 All text messages and phone calls received were nonconsensual. Id. Plaintiff alleges that the
21 purpose of the contact was to solicit him to sign up for the defendants’ products and services. Id.
22 Plaintiff seeks to represent a class consisting of “All persons in the United States whose (1)
23 telephone numbers were on the National Do Not Call Registry for at least 31 days, (2) but who
24 received more than one telemarketing call from or on behalf of Defendant promoting Golden
25 Capital’s goods or services, (3) within a 12-month period (4) at any time in the period that begins
26 four years before the date of filing this Complaint to trial.” Id. at 8. On behalf of himself and the
27 putative class, plaintiff sues defendant for a single count of violation of the TCPA. Id. at 9.

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1 B. Motion to Dismiss

2 Defendant moves to dismiss the complaint in its entirety, arguing that the communications
3 did not violate the TCPA because they offered to purchase a property rather than sell a good or
4 service, and to dismiss the class claims because plaintiffs' class allegations are facially deficient,
5 and plaintiff is disqualified from service as a class representative. ECF No. 22 at 1.

6 **II. Analysis**

7 A. Legal Standards Governing Motions to Dismiss

8 1. Standards Under Rule 12(b)(1)

9 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by
10 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific
11 claims alleged in the action. When a party brings a facial attack to subject matter jurisdiction,
12 that party contends that the allegations of jurisdiction contained in the complaint are insufficient
13 on their face to demonstrate the existence of jurisdiction. Safe Air for Everyone v. Meyer, 373
14 F.3d 1035, 1039 (9th Cir. 2004). In a Rule 12(b)(1) motion of this type, the factual allegations of
15 the complaint are presumed to be true, and the motion is granted only if the plaintiff fails to allege
16 an element necessary for subject matter jurisdiction. Savage v. Glendale Union High Sch. Dist.
17 No. 205, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); Miranda v. Reno, 238 F.3d 1156, 1157 n.1 (9th
18 Cir. 2001).

19 2. Standards Under Rule 12(b)(6)

20 “The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
21 sufficiency of the complaint.” N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 581 (9th Cir.
22 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
23 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t., 901
24 F.2d 696, 699 (9th Cir. 1990).

25 In order to survive dismissal for failure to state a claim, a complaint must contain more
26 than a “formulaic recitation of the elements of a cause of action;” it must contain factual
27 allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic Corp. v.
28 Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of

facts that “merely creates a suspicion” that the pleader might have a legally cognizable right of action. Id. (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-35 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

In reviewing a complaint under this standard, the court “must accept as true all of the factual allegations contained in the complaint,” construe those allegations in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true legal conclusions cast in the form of factual allegations, or allegations that contradict matters properly subject to judicial notice. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001). t

B. Attached Evidence

As a preliminary matter, the court notes that defendant has attached exhibits to his motion that are not subject to judicial notice and are not part of the pleading, and the court therefore cannot consider these documents on a motion to dismiss. “When ruling on a Rule 12(b)(6) motion to dismiss, if a district court considers evidence outside the pleadings, it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond.” United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). The court declines to convert defendant’s motion into a motion for summary judgment. The attached documents are accordingly not considered.

C. Failure to State a Claim

Defendant argues that plaintiff fails to state a claim as to its sole cause of action, violation of the TCPA. The TCPA prohibits initiating “more than one telephone [solicitation] within any

1 12-month period” to a “residential telephone subscriber who has registered his or her telephone
2 number on the national do-not-call registry.” 47 U.S.C. § 227(c)(5). “Telephone solicitation”
3 means “the initiation of a telephone call or message for the purpose of encouraging the purchase
4 or rental of, or investment in, property, goods, or services, which is transmitted to any person”
5 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(15). Whether a call or text is considered a
6 solicitation is determined by the purpose of the message. Chesbro v. Best Buy Stores, L.P., 705
7 F.3d 913, 918 (9th Cir. 2012).

8 Defendant primarily relies on a recently decided case from the District of Arizona which
9 presented analogous facts. In Coffey v. Fast Easy Offer LLC, U.S. District Judge Steven P.
10 Logan evaluated a case in which plaintiff Vicki Coffey, whose number was on the Do Not Call
11 Registry, received “numerous telephone calls and text messages from a rotating series of phone
12 numbers, seeking to solicit [Coffey] to sell her home or engage various entities to represent or
13 assist her in the sale of her home.” 24-cv-02725-PHX-SPL, 2025 WL 1591302, at *1, 2025 U.S.
14 Dist. LEXIS 106786 (D. Ariz. June 5, 2025). The initial text sent to Coffey read, “Hello Vickey,
15 this Yannick the home buyer. Have you given up on selling your ... property?” Id. The second
16 text read, “Have you given up on selling your property?” Id. Coffey did not recognize the callers
17 and was not looking to sell her home; when she asked the caller to identify the party responsible
18 for these messages, she was provided a website link to <https://www.fasteasyoffer.com>. Id. Coffey
19 brought suit against Fast Easy Offer LLC (“Fast”), alleging that the text messages she received
20 constituted “telephone solicitations” in violation of the TCPA. Id. As defendant does in this
21 case, Fast moved to dismiss, arguing that Coffey “failed to plausibly allege a solicitation because
22 her alleged caller ‘wanted to buy her home,’ but did not ask [her] ‘to herself purchase, rent, or
23 invest in anything.’” Id. at *2.

24 As plaintiff does here, Coffey argued that although “the TCPA’s plain text focuses on
25 calls and messages that encourage the solicited party’s purchase or rental of, or investment in,
26 property, goods, or services . . . [Fast’s] offer to purchase her home contains within it an implied
27 offer of services;” essentially, Fast’s messages were a pretextual attempt to encourage Coffey to
28 sell her home through Fast, to Fast’s pecuniary benefit. Id. at 3. Judge Logan rejected this

1 argument and dismissed the case. After analyzing relevant caselaw, Judge Logan explained that
2 “even assuming that [Fast] intended to ultimately generate business based on the sale of
3 [Coffey’s] home, the messages and calls [Coffey] received relate to future potential advertising.
4 And the fact that [Coffey] was directed to [Fast’s] website, which advertises its real estate
5 services, is not itself dispositive, as ‘the mere inclusion of a link to a website on which a
6 consumer can purchase a product does not transform the whole communication into a
7 solicitation.’” *Id.* at 4 (quoting *Vallianos v. Schultz*, No. 19-cv-0464-JCC, 2019 WL 4980649, at
8 *3, 2019 U.S. Dist. LEXIS 174729, at *9–10 (W.D. Wash. Oct. 8, 2019)).

9 Judge Logan expressed sympathy to Coffey’s “skepticism regarding this buying/selling
10 distinction, especially where the end result is the same: [Fast] make[s] money off [Coffey]. It is
11 true that, construing [Coffey’s] factual allegations in the most favorable light, were [Coffey] to
12 agree to use [Fast’s] services to sell her house, [Fast] would ultimately benefit from an ‘effective
13 fee’ deducted from the offer price.” *Id.* Judge Logan acknowledged that taking that view, “the
14 calls and texts might constitute ‘solicitations’ in the colloquial sense of the word.” *Id.*
15 Nonetheless, Judge Logan explained, under this rationale Coffey would still be *making* money on
16 the sale of her home, even if Fast took a cut of the profits. *Id.* In determining that Fast’s actions
17 did not violate the TCPA because they were not solicitations within the definition of that statute,
18 Judge Logan noted that plaintiff’s “quarrel is with Congress” which did not define “solicitation”
19 in a manner that includes Fast’s actions. *Id.* (quoting *Facebook, Inc. v. Duguid*, 592 U.S. 395,
20 409 (2021)).

21 The undersigned finds the reasoning of *Coffey* to be persuasive. An offer to buy simply
22 does not fall within the statutory definition of “solicitation” because it is not a communication
23 “for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or
24 services, which is transmitted to any person” *See* 47 U.S.C. § 227(a)(4); 47 C.F.R. §
25 64.1200(f)(15). Unsolicited offers to buy may indeed be as unwelcome and intrusive as are
26 unsolicited offers of property, goods or services for sale—but Congress addressed only the latter
27 problem in the TCPA. The court lacks the authority to construe the statute more broadly than its
28 language permits in order to address the harm plaintiff seeks to redress.

1 Plaintiff attempts to distinguish Coffey by stating that the messages sent in that case were
2 “pure” offers to buy. ECF No. 27 at 7-8. But the messages sent in Coffey were no more pure
3 offers to buy than those sent to plaintiff. Plaintiff alleges the text messages he received read
4 “Hello KIMBERLY, Came across your property in SACRAMENTO. Are you open to options to
5 sell it?” and “Do you own the property at [NN]A[XXXXXX XXXX]?” ECF No. 1 at 4-5. The
6 messages sent to Coffey read “Hello Vickey, this Yannick the home buyer. Have you given up
7 on selling your ... property?” and “Have you given up on selling your property?” Coffey, 2025
8 WL 1591302, at *1. There is no appreciable difference.

9 Indeed, plaintiff’s argument here is exactly the same as the argument made by Coffey: that
10 defendant’s offer to buy plaintiff’s house was really a solicitation for a service from which
11 defendant would ultimately make money. ECF No. 27 at 8. This argument was expressly, and
12 the undersigned believes correctly, rejected by Judge Logan. The undersigned agrees with
13 defendant that the TCPA claim must be dismissed for failure to state a claim upon which relief
14 can be granted.

15 While plaintiff makes allegations regarding defendant’s unlicensed practice of real estate,
16 these allegations are unrelated to the TCPA claim which is the only cause of action in this case.
17 Because plaintiff failed to state a claim that defendant violated the TCPA, the undersigned finds
18 defendant’s motion to dismiss should be GRANTED.

19 III. Conclusion

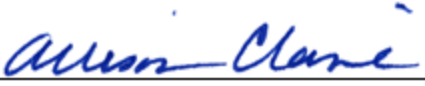
20 The undersigned recommends that defendant’s motion to dismiss (ECF No. 22) be
21 GRANTED and that this case be closed.

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
24 after being served with these findings and recommendations, any party may file written
25 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
26 document should be captioned “Objections to Magistrate Judge’s Findings and
27 Recommendations.” Failure to file objections within the specified time may waive the right to
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1 appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez
2 v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 DATED: July 18, 2025

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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